

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

ANDREA ERHART, ET AL)	
)	
Plaintiffs,)	
)	
v.)	Case No. 4:16-CV-01946 SNLJ
)	
BAYER, CORP., BAYER HEALTHCARE)	
LLC., BAYER ESSURE, INC., (F/K/A)	
CONCEPTUS, INC.), BAYER)	
HEALTHCARE PHARMACEUTICALS,)	
INC., BAYER A.G.,)	
)	
Defendants.)	

MEMORANDUM AND ORDER

This matter is before the Court on plaintiffs’ motion to remand (#13) and defendants’ motions to dismiss (#4), sever (#7), and stay proceedings (#23). The removing defendants oppose plaintiffs’ motion to remand, alleging plaintiffs fraudulently joined and fraudulently misjoined the non-Missouri plaintiffs for the sole purpose of defeating diversity jurisdiction. The matters are fully briefed and ripe for disposition.

I. Background

The ninety-four plaintiffs initially filed this action in state court, claiming they were each injured from the implantation and use of Essure, a medical device used as a form of permanent birth control that is manufactured and distributed by the defendants. The plaintiffs are residents of 26 states, including Missouri, Indiana, New Jersey, and Pennsylvania.

Defendant Bayer Corporation is a citizen of Indiana and Pennsylvania; defendant Bayer HealthCare LLC is a citizen of New Jersey and Pennsylvania; and defendants Bayer Essure, Inc. and Bayer Pharmaceuticals, Inc. are citizens of New Jersey. Plaintiff Amber Lambermont is a resident of Pennsylvania; plaintiff Marita Vicente is a citizen of New Jersey; and plaintiff Stormi Knight is a citizen of Indiana. Consequently, diversity jurisdiction is lacking on the face of the complaint.

Defendants removed the case to this Court based on (1) diversity jurisdiction pursuant to 28 U.S.C. § 1332(a), (2) federal question jurisdiction pursuant to 28 U.S.C. § 1331, and (3) removal jurisdiction pursuant to the “mass action” provision of the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. § 1332(d)(11)(B)(i), due to the number of plaintiffs and claims when considered in conjunction with the number of plaintiffs and claims in nearly identical complaints filed in several other Essure device cases in this District.

II. Essure Cases in this Court

In the past few months, at least eight nearly identical lawsuits have been filed in this Court where plaintiffs and defendants have been represented by the same attorneys and the causes of action are based on the same allegedly defective product. The legal issues presented in this pending motion to remand are exactly the same as those presented in the other cases, and in each case this Court has granted the motion to remand. This Court agrees with the disposition in those cases and the reasoning and rationale used in arriving at that disposition, and adopts the same.


See Tenny v. Bayer Healthcare, LLC, No. 4:16-CV-1189 RLW, 2016 WL 7235705 (E.D. Mo. Dec. 13, 2016); *Mounce v. Bayer Corp*, No. 4:16-CV-1478 RLW, 2016 WL 7235707 (E.D. Mo. Dec. 13, 2016); *Tabor v. Bayer Corp.*, No. 4:16-CV-1682 RWS, ECF No. 38 (E.D. Mo. Dec. 16, 2016); *McPeters v. Bayer Corp.*, No. 4:16-CV-1680 SPM, 2017 WL 57250 (E.D. Mo. Jan. 5, 2017), *Hall v. Bayer Corp.*, No. 4:16-CV-1523 CEJ, 2017 WL 86011 (E.D. Mo. Jan. 10, 2017), *Dotson v. Bayer Corp.*, No. 4:16-CV-1593 PLC, 2017 WL 35706 (E.D. Mo. Jan. 4, 2017); *Robb v. Bayer Healthcare, LLC*, No. 4:16-CV-1727 RLW, ECF No. 27 (E.D. Mo. Dec. 13, 2016); and *Jones v. Bayer Corp*, No. 4:16-CV-1192 JCH, 2016 WL 7230433 (E.D. Mo. Dec. 14, 2016).

IT IS HEREBY ORDERED that plaintiffs' motion to remand (#13) is **GRANTED**.

IT IS FURTHER ORDERED that this case is **REMANDED** to the Circuit Court for the Twenty-Second Judicial Circuit, City of St. Louis, Missouri.

IT IS FURTHER ORDERED that all other pending motions in this case are **DENIED** without prejudice, as moot.

So ordered this 8th day of February, 2017.



STEPHEN N. LIMBAUGH, JR.
UNITED STATES DISTRICT JUDGE